THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NOs : 11469 and 11969 of 2006

DATED: 20-06-2006

W.P.No.11469 of 2006

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BETWEEN:

N.Guravaiah .. Petitioner

And

The Regional Joint Commissioner and others

.. Respondents

W.P.NO.11969 OF 2006

–

BETWEEN:

T.Vengaiah

. Petitioner

and

The Regional Joint Commissioner of

Endowments and others

… Respondents

THE HON'BLE MR JUSTICE GODA RAGHURAM

–

WRIT PETITION NOs : 11469 and 11969 of 2006

COMMON ORDER:

In the first writ petition, the petitioner, who is Sarpanch of the Narrawada Gram Panchayat, Duttalur Mandal,
Nellore District, seeks a declaration that the order dated 08.03.2006 of the first respondent-Regional Joint Commissioner, Endowments Department, Tirupathi in R.P.No.4/2005, setting aside the order dated 03.12.2003 of the second respondent is illegal.

According to the petitioner, the fourth respondent, while functioning as the Managing Trustee of Sri Vengamamba Perantalu Temple of the Narrawada village, indulged in gross irregularities, illegalities and misappropriation of the

temple funds. The second respondent appointed an Enquiry Officer, who framed charges against the fourth respondent and submitted a report concluding that the charges were proved. The second respondent after issuing show cause notice and completing other procedural formalities of inquiring passed an order on 03.12.2003 under Section 28(1)(a) and (d) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the Act), disqualifying the fourth respondent as the trustee of the temple.

Assailing the above order, the fourth respondent filed W.P.No.27037 of 2003 before this Court and sought suspension of the order dated 03.12.2003. The petitioner got himself impleaded as the third respondent in the writ petition. This Court did not grant any interim relief to the fourth respondent in the said writ petition and eventually the fourth respondent withdrew the writ petition and the same was dismissed as withdrawn on 01.02.2005. Thereafter, the fourth respondent filed a revision petition being R.P.No.4 of 2005 before the first respondent under Section 92 of the Act. The petitioner avers that in the last week of May, 2006, he learnt that the first respondent by an order dated 08.03.2006 allowed the revision petition, setting aside the order dated 03.12.2003 of the second respondent (disqualifying the petitioner from holding office as the Managing Trustee) and remanded the matter to the second respondent for fresh inquiry. After obtaining a copy of the said order, the petitioner perceived that the order was invalid, as the first respondent had not rationally considered the relevant aspects before interfering with a well considered and duly passed order of the second respondent dated 03.12.2003. Hence, the writ petition seeking invalidation of the first respondent order dated 08.03.2006.

Inter alia, the petitioner contends that under Section 90 of the Act, an appeal lies to the Commissioner if filed within 90 days against an order passed under Section 28(1) of the Act and under Section 92 of the Act, a revision lies to the Commissioner against any order passed by subordinate officers. Such revision also should be filed within 90 days and there is no provision for condoning the delay either in an appeal or revision. According to the petitioner, since the fourth respondent was disqualified for being a trustee by the order dated 03.12.2003 and has not chosen to file either an appeal or revision within the time stipulated under Sections 90 or 92 of the Act, the first respondent could

not have entertained the R.P since the fourth respondent had preferred a revision in February, 2005 long after the period of limitation prescribed under Section 92 of the Act was over.

The second writ petition is by the fourth respondent in the first writ petition. What is challenged is again the order of the first respondent dated 08.03.2006 in R.P.No.4 of 2005. The petitioner herein assails the order impugned on the ground that as Sri Vengamamba Perantalu Temple of Narrawada village, Duttalur Mandal, Nellore District is a temple classified as the one under Section 6(a) of the Act, it is the Commissioner of Endowments who is competent to initiate action, if facts and circumstances so warrant, under Section 28(a) and (d) of the Act and not the Deputy Commissioner of Endowments, who had initially exercised jurisdiction and had passed the order dated 03.12.2003. The impugned order of the first respondent remanding the matter again to the Deputy Commissioner after setting aside the order dated 03.12.2003 is therefore incompetent, is the substance of the petitioner's contention, on the basis of which relief is claimed, in W.P.No.11969 of 2006.

Grave allegations of misconduct in office have been made against the fourth respondent in the first writ petition, who is the petitioner in the second writ petition. By the order dated 3.12.2003, the Deputy Commissioner concerned had found this person guilty of all the charges of mismanagement and of misappropriation of temple, established.

It is the admitted position, between the parties, that the subject temple is a Section 6(a) temple and that the authority competent to appoint trustees to the temple, is the Commissioner of Endowments. The temple was declared as one under Section 6(a) of the Act on 15.10.2003. The inquiry proceedings against the petitioner (W.P.No.11969 of 2006) were initiated much prior to such notification. However, the order finding this person guilty of the charges were passed by the Deputy Commissioner of Endowments on 3.12.2003 after the temple was declared a 6(a) temple. As on the date of the decision (03.12.2003), it was only the Commissioner of Endowments who was competent to appoint a managing trustee for the temple. Section 28 of the Act confers powers of suspension, removal or dismissal of a trustee. Under sub section (1) of Section 28, the authority competent to appoint a trustee may suspend, remove or dismiss a trustee if the statutory requirement was satisfied.

In the factual circumstances above, the order of
the Regional Joint Commissioner dated 08.03.2006, remanding the matter to the Deputy Commissioner, Guntur for consideration *de novo* after invalidating the earlier order dated 03.12.2003 is incompetent. It is so declared.

Having regard to the gravity of the allegations made against the petitioner in W.P.No.11969 of 2006, the Commissioner of Endowments who is impleaded as a respondent in both the writ petitions above today, is directed to consider, if circumstances justify initiating an enquiry into the charges earlier levelled against the trustee by the Deputy Commissioner of Endowments and in respect of which the Deputy Commissioner had earlier passed an order dated 03.12.2003 which was invalidated by the remand order of the first respondent dated 08.03.2006, impugned in both the writ petitions. The Commissioner of Endowments shall also consider and within 3 days of receipt of a copy of this order, whether there is *prima facie*, material against the trustee warranting any ad-interim orders under Section 28 of the Act.

Sri Adinarayana Rao, learned counsel for the petitioner (W.P.No.11969 of 2006) states that in the totality of the circumstances this petitioner recuses himself from functioning as a managing trustee of Sri Vengamamba Perantalu Temple, Narrawada Village, Duttalur Mandal, Nellore District till the conclusion of the inquiry against him by the Commissioner of Endowments. This fact may also be considered by the Commissioner of Endowments. In any event, the Commissioner of Endowments shall conclude the inquiry against the petitioner (W.P.No.1969 of 2006) within 30 days from the date of receipt of a copy of this order irrespective of whether there is a change in the incumbency of the Commissioner's office. The time-frame prescribed herein for completion of the enquiry is inflexible and shall be completed without fail or demur.

Sri Venkateshwarlu, the learned counsel for the petitioner has also urged that as the petitioner (W.P.No.11969 of 2006) had earlier filed writ petition No.27037 of 2003 and the same was withdrawn without the leave of the Court, he is disentitled to pursue either an appeal or the revisional remedy. This contention is stated to be rejected. The dismissal of W.P.No.27037of 2003 as withdrawn by this Court does not constitute *res judicata* as there was no adjudication on the merits of the case. This petitioner perhaps was disentitled to file another

writ petition, but there is no bar to pursuing the statutory remedies of appeal or revision, as the case may be, as available in law merely on the circumstance that an earlier writ petition filed by him against an order was withdrawn and dismissed as such.

The writ petitions are disposed of as above. There shall be no order as to costs.

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GODA RAGHURAM,J

Dated: 20-06-2006

Note: Issue C.C. in two days

B/`o Kvrm